

United States District Court
EASTERN DISTRICT OF TEXAS
PARIS DIVISION

UNITED STATES OF AMERICA §
§
vs. § Case No. 3:03cr11
§ (Judge Schell)
BENNY HAROLD WAGGONER(3) §

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Pending before the Court is the request for revocation of Defendant's supervised release.

After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on January 19, 2010, to determine whether Defendant violated his supervised release. Defendant was represented by Denise Benson. The Government was represented by Ernest Gonzalez.

On June 17, 2004, Defendant was sentenced by the Honorable Richard A. Schell to seventy (70) months' custody followed by five (5) years of supervised release for the offense of Conspiracy to Manufacture, Distribute or Possess with Intent to Manufacture, Distribute or Dispense Methamphetamine. On March 12, 2008, Defendant completed his period of imprisonment and began service of his supervised term.

On November 30, 2009, the U.S. Pretrial Services Officer executed a Petition for Warrant for Offender Under Supervision. The petition asserted that Defendant violated the following mandatory condition: the defendant shall refrain from any unlawful use of a controlled substance and the defendant shall submit to one drug test within fifteen days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer. The petition asserted that Defendant violated the following standard conditions: the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other

controlled substance or paraphernalia related to such substances, except as prescribed by a physician. The petition alleges violation of the following special condition: the defendant shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S. Probation Office, until such time as the defendant is released from the program by the probation officer.

The petition alleges that Defendant committed the following acts: (1) The defendant submitted urine specimens that tested positive for methamphetamine on July 22, August 31, September 8, and November 23, 2009, at Community Health Core in Paris Texas; and (2) The defendant failed to report for drug testing on September 23, 2009 and November 4, 9, 17, and 21, 2009 at Community Health Core in Paris, Texas. Defendant also failed to attend group counseling on September 21, 22, 23, and 24, 2009, October 19, 21, and 26, 2009, November 3, 4, 5, 9, 10, 11, 12, 16, 17, 18, and 19, 2009 at Community Health Core in Paris, Texas.

Prior to the Government putting on its case, Defendant entered a plea of true to all of the violations. The Court recommends that Defendant's supervised release be revoked.

RECOMMENDATION

The Court recommends that the District Judge revoke Defendant's supervised release. The Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of six (6) months followed by thirty-six (36) months of supervised release. It is also recommended that Defendant be housed in the Bureau of Prisons, Texarkana Unit, or, if that is not available, then FCI El Reno.

After the Court announced the recommended sentence, Defendant executed the consent to revocation of supervised release and waiver of right to be present and speak at sentencing. Defendant and the Government also waived their right to file objections.

SIGNED this 20th day of January, 2010.



AMOS L. MAZZANT
UNITED STATES MAGISTRATE JUDGE